

Decision 02-12-012 December 5, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Norstan Network Services, Inc., NetWolves Corporation, and NetWolves Acquisitions, Inc. for Approval of a Change of Ownership.

Application 02-03-052  
(Filed March 18, 2002)

**O P I N I O N**

**1. Summary**

This application seeks approval under Pub. Util. Code §§ 851-854 of a transaction that will result in a change of control of Norstan Network Services, Inc. (NNSI), (U-5268-C), an interexchange telecommunications service company in California, to NetWolves Corporation (NetWolves) and NetWolves Acquisitions, Inc. (NAI). The transaction is structured to take effect upon approval by government entities, including this Commission. The application is unopposed and is granted.

**2. Description of Applicants**

NNSI is a Minnesota corporation with its principal business office in Minnetonka, Minnesota. It was authorized to provide interexchange telecommunications services on a resale basis in California by Decision (D.) 92-03-002 on May 8, 1992. It is authorized to provide long distance service in 30 states and the District of Columbia.

NetWolves is a New York corporation, which does no business in California and is not registered as a foreign corporation in California. Its

corporate headquarters is in Bohemia, New York. NetWolves is a developer of high performance Internet security solutions for education and other markets. NetWolves was first organized in February 13, 1998. The applicants state that the acquisition of NNSI will give NetWolves a marketplace advantage by permitting NetWolves to offer a complete program of Internet security and communications services when soliciting the business of Fortune 2000 companies, including the approximately 400 of such companies to which NNSI is already providing services.

NAI is a Delaware corporation, which does no business in California and is also not registered as a foreign corporation in California. NAI is wholly-owned subsidiary of NetWolves. NAI is also headquartered in Bohemia, New York.

### **3. Description of Transaction**

On January 30, 2002, NNSI and NNSI's corporate parent, Norstan, Inc., entered into a Stock Purchase Agreement (Agreement) with NetWolves and NAI under which, subject to the approval of this Commission and other regulatory bodies having jurisdiction over NNSI, NAI will purchase all of the common stock of NNSI from Norstan, Inc.

Under the Agreement, NAI will purchase all the outstanding stock of NNSI in exchange for the payment of cash and a promissory note. A copy of the Agreement is attached to the application as Exhibit E. That exhibit sets out all the terms of the acquisition of NNSI's common stock, including the amounts and methods of payments, warranties, conditions of closing and adjustments that may be made at closing. The applicants consider the Agreement to be a trade secret.

The applicants state that they supply Exhibit E only on the basis that it receive Trade Secret status, and request under California Civil Code § 3426 that Exhibit E receive Trade Secret treatment and not be available to any third parties. In support of this request, the applicants state that the information contained in Exhibit E derives independent economic value from not being generally known to or readily ascertainable by proper means by other persons who could obtain economic value from disclosure and use of the financial information in the exhibit. Applicants go on to state that in the increasingly competitive world of telecommunication services, detailed information about a competitor's costs, financial arrangements and business plans (which are revealed in Exhibit E) is of significant value to a competitor, and can be used by a competitor to its unfair advantage. This is particularly the case here, where NNSI will be operating in the competitive California long-distance telephone market and will be competing with numerous interexchange carriers, all of whom could use the financial and business planning information in Exhibit E to their competitive advantage.

The Agreement reveals material information about NNSI, NetWolves, and NAI that the companies would not voluntarily provide to any third party, and in particular would keep from competitors. Applicants note that the Agreement is not revealed by NNSI and NetWolves to persons outside the companies except as necessary for tax, financial and legal advice and support, and is disclosed to persons within the companies only as necessary for the conduct of the businesses.

The applicants have further agreed that NetWolves will manage NNSI's operations pending final regulatory approval, and Norstan, Inc. will provide ownership and control.

NetWolves intends to continue the retail operations of NNSI essentially unchanged, and expects to retain the present management and employees of NNSI. Exhibit F to the application contains the biographical information on the key managers of NNSI. Customers of NNSI are not expected to see any change of services or support they have become used to receiving from NNSI as a result of the change in ownership.

#### **4. Effects of the Transaction**

Applicants state that there will be no effect visible to customers from the transaction, in addition to continuing the business in its current form; NetWolves will utilize the NNSI name after the purchase.

Applicants state that although the transaction will result in a change in control, it will not involve any change in the manner in which services are provided to their respective customers. NetWolves will operate under the NNSI name and tariffs. Applicants state that the transfer of control will be transparent to customers and will have no adverse impact upon them. In fact, applicants claim that the efficiencies, technological enhancement, and capital infusion that will follow, as a result of the transfer of assets, will allow NetWolves to provide better service to its California customers.

Exhibits attached to the application and those under seal describe the transaction in more detail and provide the data that indicates NetWolves will have the financial and technical qualifications necessary to continue NNSI's operations in California.

#### **5. Public Interest**

The application states that the transfer of control will serve the public interest, as ratepayers will receive the benefit of the transaction due to NetWolves' access to credit markets. Applicants maintain the customers will

continue to receive high or higher-quality services they have come to expect from NSSI. NetWolves claims that it will be able to make investments needed to ensure the quality of service California customers expect and deserve.

## **6. Discussion**

Pub. Util. Code §§ 851-854 require Commission authorization before a company may “merge, acquire, or control...any public utility organized and doing business in this state....” The purpose of these sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

The proposed transfer of control here promises the same high or higher-quality for NSSI’s California consumers. No changes in the existing services of NSSI are proposed.

We authorize applicants’ request to consummate the proposed transaction. Where a company such as NetWolves, which does not possess a CPCN, seeks to acquire control of companies that do possess a CPCN, we apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the companies being acquired. (*Joint application of Empire One Telecommunications, Inc. and EOT Acquisition Corporation*, D.99-12-022, mimeo, p. 2.) Since NSSI possesses a CPCN to act as a provider of interexchange long distance telephone service, we will apply the requirements for such authority to NetWolves.

The Commission has established two major criteria for the issuance of a CPCN to act as a provider of telecommunications services. An applicant that desires to act as a switchless reseller must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to

meet startup expenses. NetWolves as a prospective interexchange carrier must meet the \$25,000 requirement. NetWolves far exceeds the \$25,000 minimum, as shown in its financial data provided as Exhibit H (filed under seal) to this application.

A new entrant must also make a reasonable showing of technical or managerial expertise in telecommunications or a related business. While NetWolves is technically a new company, all of its operating personnel, managerial and technical personnel come from NNSI. NNSI's managerial, technical and operational team's experience is extensive as shown in Exhibit F. Its three key managers have, in the aggregate, over 27 years of combined telecommunications and financial experience. NetWolves meets the Commission's managerial, technical and financial criteria.

## **7. Request for Confidentiality**

Applicants request that financial information pertaining to Exhibit E, the "Agreement", the document that sets forth the terms of the acquisition and Exhibit H, the pro-forma projection for the first 24 months of NNSI's intended operations post-transaction filed with this application, be filed under seal. Applicants represent that the information is proprietary and sensitive. The information, if revealed, would place applicants at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

There are no protests to the application. NNSI is not exiting the business of providing interexchange service to its customers; it has written contracts with all of its customers, and since no rate increase is requested, no notice is required pursuant to Pub. Util. Code § 2889.3.

The contemplated transfer of control appears to be noncontroversial. In Resolution ALJ 176-3086, dated April 22, 2002, the Commission preliminarily

categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3068.

The application is granted, subject to the terms and conditions set forth below.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

#### **8. Assignment of Proceeding**

Geoffrey Brown is the Assigned Commissioner and Dean Evans is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. Notice of this application appeared in the Commission's Daily Calendar of April 5, 2002.
2. NetWolves meets the technical and financial requirements for a new telecommunications entrant.
3. Applicants seek approval pursuant to Pub. Util. Code §§ 851-854 of a transaction that will transfer control of Norstan Network Services, Inc. to NetWolves Corporation.
4. There will be no change in current services or rates provided by NNSI as a result of the transfer of control, nor will there be a name change from NNSI to NetWolves.
5. The proposed transfer of control is in the public interest, as the existing customers of NNSI should see the same high-quality service from NetWolves.

6. Public disclosure of financial information pertaining to NNSI and NetWolves financial and acquisition details, included as Exhibit E and H to this application, would place applicants at an unfair business disadvantage.

**Conclusions of Law**

1. This proceeding is designated a ratesetting proceeding; no hearing is necessary.
2. The application should be granted and the transfer of control approved as in the public interest, subject to the provision of customer notice.
3. Applicants' request to file its financial information under seal should be granted for two years.

**O R D E R**

**IT IS ORDERED** that:

1. Norstan Network Services, Inc., NetWolves Corporations and NetWolves Acquisitions, Inc. (collectively, applicants) are authorized pursuant to Pub. Util. Code §§ 851-854 to enter into the transaction, as more fully described in the application and its exhibits, by which NetWolves Corporation and NetWolves Acquisitions, Inc. will acquire and control Norstan Network Services, Inc.
2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within 10 days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.
3. NNSI and NetWolves shall make all books and records available for review and inspection upon Commission staff request.
4. Applicants' request that the financial information pertaining to financial data and acquisition details, filed with this application be kept under seal is



granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

5. If Applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

6. The authority granted herein shall expire if not exercised within one year of the date of this order.

7. Application 02-03-052 is closed.

This order is effective today.

Dated December 5, 2002, at San Francisco, California.

HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

President Loretta M. Lynch, being necessarily absent,  
did not participate.